

Regulation (39-) 26-102.3.

"Doing business in this state" under C.R.S. 39-26-102(3)(a) requires that the person both (1) sell, lease, or deliver tangible personal property in this state, and (2) maintain, directly or indirectly, an office, salesroom, warehouse, or similar place of business within the state. A person meeting these requirements must obtain a Colorado Sales Tax License.

"Doing business in this state" under C.R.S. 39-26-102(3)(b) requires that the person both (1) sell, lease, or deliver tangible personal property in this state, and (2) regularly or systematically make solicitations in this state. A person meeting these requirements should obtain a Colorado Retailer's Use Tax License.

(2) National Geographic Society v. California Board of Equalization, 430 U.S. 551 (1977). National Geographic Society was a scientific and educational corporation in the District of Columbia, but they also maintained offices in California. The California offices solicited advertising for the Society's monthly magazine, The National Geographic Magazine, but made no other sales. The parent organization in the District of Columbia, in addition to the selling of catalogs, also made sales of maps, atlases, globes and books. Orders for these items were taken by mail from California residents and deliveries were made from the Society's Washington D.C. or Maryland offices. The Court ruled that although orders were taken for delivery through the U.S. mail, because the company maintained offices in the state of California, the Society was liable for the collection of the state's retailers use tax. The fact that the California office was not directly related to the selling of these maps, atlases and globes, and their activities were limited to soliciting advertising for their monthly magazine, did not exempt them from collecting the California use tax. In the court's opinion, having an office, representative or an agent is sufficient to establish nexus. In accordance with this decision, any out-of-state retailer who makes sales in Colorado, either by direct or indirect representatives, manufacturing agents, or who maintains an office or subsidiary in Colorado, must collect the Colorado retailers use tax, even if doing business in Colorado only by means of catalogs or other mail advertising media.

The definition of "soliciting" is limited by those conditions described in National Bellas Hess, Inc. v. Illinois Dept. of Revenue, 386 U.S. 753 (1967). Solicitation does not include activities by an outstate retailer through the U.S. Mail, telephone, telegraph or common carrier. Also see National Geographic Society v. California Board of Equalization, _____, U.S._____, 45 L.W. 4343, Apr. 4, 1977).